

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Joint Petition for Expedited Rulemaking	)	RM-10865
Concerning the Communications	)	
Assistance for Law Enforcement Act	)	
	)	

**Reply Comments**



**I. Introduction**

The American Cable Association (“ACA”) supports Comments filed in this docket by the National Telecommunications Cooperative Association.<sup>1</sup> Like many telecommunications cooperatives, smaller cable companies are delivering broadband Internet access to lower density, higher cost markets. Before imposing additional compliance costs on rural providers and consumers, the Commission should carefully consider the potential impact and evaluate alternatives.

**American Cable Association.** ACA represents nearly 1,000 cable companies that serve about 8 million cable subscribers, primarily in smaller markets and rural areas. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller markets. About half of ACA’s members serve fewer than

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<sup>1</sup> Comments of National Telecommunications Cooperative Association (“NTCA”) (filed April 12, 2004) (“NTCA Comments”).

1,000 subscribers. Smaller cable operators face special challenges building, operating, and upgrading broadband networks in lower density, higher cost markets.

**II. The Commission should evaluate CALEA compliance costs and alternatives for smaller market providers.**

As the Commission is already aware, for many smaller companies, compliance with many FCC rules and regulations results in substantial administrative burdens and costs. ACA is on the record in many other proceedings demonstrating that smaller market cable operators consistently require regulatory, administrative, and financial relief. This rulemaking would be no exception. NTCA states ACA's concerns clearly: "[T]he Commission should take care to not impose new regulations or deadlines without considering the operating realities of small, rural carriers."<sup>2</sup>

Before adopting new regulations and deadlines related to CALEA enforcement, the Commission should evaluate the potential impact on small, rural providers. As reported to the Commission in other proceedings, smaller cable operators are at the forefront of delivering broadband Internet access to smaller markets and rural areas. In expanding CALEA compliance to these services, the Commission should consider compliance costs that the regulations would impose on smaller providers. As in many other areas of cable and telecommunications, the Commission here should consider size-based exemptions and phase-ins. As stated by NTCA: "[T]he Commission should set realistic goals after the technology is available and let rural carriers get to the business of running their company and upgrading their services."<sup>3</sup> Because CALEA

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<sup>2</sup> NTCA Comments at 1.

<sup>3</sup> NTCA Comments at 3.

compliance will require changes in each cable headend, small systems and smaller market consumers could bear disproportionately high compliance cost burdens.

**III. The Commission has ample authority and precedent to adopt CALEA rules for smaller providers.**

As we recently pointed out in Comments regarding regulatory fee payments, Congress and the Commission have consistently expressed special concern for the ability of smaller cable companies to bear the costs and burdens of statutory and regulatory obligations. The 1992 Cable Act and the 1996 Telecommunications Act both contain Congress' express recognition of this public interest through inclusion of specific small cable provisions. For example, 47 USC § 543 provides, "in developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."<sup>4</sup> Section 301(c) of the 1996 Telecommunications Act expends the small cable regulatory relief under section 543.<sup>5</sup>

Commission regulations also contain ample precedent for extending relief to smaller market cable companies. Commission regulations exempt smaller systems from a range of other obligations to reduce the burdens and costs of various compliance requirements. For example, the Commission's regulations governing network nonduplication,<sup>6</sup> syndicated exclusivity,<sup>7</sup> sports blackouts,<sup>8</sup>

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<sup>4</sup> 47 USC § 543(i). See *also* Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), codified at 47 USC § 543(m).

<sup>5</sup> 47 USC § 543(m).

<sup>6</sup> 47 CFR § 76.95(a).

<sup>7</sup> 47 CFR § 76.106(b).

proof of performance,<sup>9</sup> EAS test record retention,<sup>10</sup> EAS handbook maintenance,<sup>11</sup> and public inspection files,<sup>12</sup> all contain exemptions for small cable systems.

Moreover, in dozens of orders granting waivers of its Emergency Alert System (“EAS”) requirements, the Commission has acknowledged that the costs of installing EAS equipment would impose a financial hardship on many small cable systems.<sup>13</sup> In a recent report to Congress the Commission stated that the Enforcement Bureau has issued more than 280 orders granting small cable television systems temporary waivers of these requirements.<sup>14</sup>

Ample support exists for careful consideration of CALEA compliance on smaller cable operators. As in other contexts, exemption, extension, phase-ins or waivers may be appropriate.

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<sup>8</sup> 47 CFR § 76.111(f).

<sup>9</sup> 47 CFR § 76.601(b)(1).

<sup>10</sup> 47 CFR § 76.1711.

<sup>11</sup> 47 CFR § 76.1714(b).

<sup>12</sup> 47 CFR § 76.1700(a).

<sup>13</sup> See, e.g., *Big Sandy Telecom, Inc.; Request for Waiver of Section 11.11(a) of the Commission’s Rules*, 17 FCC Rcd 11795 (2002); *Lovell Cable TV, Inc.; Request for Waiver of Section 11.11(a) of the Commission’s Rules*, 17 FCC Rcd. 14195 (2002); *Panora Cooperative Cable Association, Inc.; Request for Waiver of Section 11.11(a) of the Commission’s Rules*, 17 FCC Rcd. 11817 (2002); *Souris River Television, Inc.; Request for Waiver of Section 11.11(a) of the Commission’s Rules*, 17 FCC Rcd. 10438 (2002); *WMW Cable Television Co.; Request for Waiver of Section 11.11(a) of the Commission’s Rules*, 17 FCC Rcd. 10444 (2002).

<sup>14</sup> *In the Matter of Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers for Entrepreneurs and Other Small Businesses*, Report, FCC 03-335, 2004 WL 253294 (rel. Feb. 12, 2004) (“*Triennial Report*”) at ¶ 78.

#### **IV. Conclusion.**

ACA and its members support the Commission's efforts to resolve CALEA implementation issues. In implementing any remaining CALEA rules and regulations, the Commission must examine alternatives for smaller providers.

Respectfully submitted,

**AMERICAN CABLE ASSOCIATION**

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Matthew M. Polka  
President  
American Cable Association  
One Parkway Center  
Suite 212  
Pittsburgh, Pennsylvania 15220  
(412) 922-8300

Christopher C. Cinnamon  
Emily A. Denney  
Cinnamon Mueller  
307 North Michigan Avenue  
Suite 1020  
Chicago, Illinois 60601  
(312) 372-3930

Attorneys for the American Cable  
Association

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